



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

SMC
Docket No: 04648-00
20 October 2000

GYS [REDACTED] USMC
[REDACTED]
[REDACTED]

Dear Gunnery Sergeant [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 18 October 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps Performance Evaluation Review Board (PERB), dated 29 June 2000, a copy of which is attached, and your letter dated 23 July 2000 with enclosure.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the report of the PERB.

The less severe actions taken against your officer in charge (OIC) and others involved in the prisoner release matter did not persuade the Board that your relief for cause was unwarranted. They were unable to find that a special agent who had been refused preferential treatment for his wife, one of your subordinates, tried to discredit you in his briefing of the staff judge advocate. While the reviewing officer of record did not explain the change in your fitness reporting chain as required by Marine Corps Order P1610.7E, paragraph 2010.6.d, the reporting senior of record, who was your former reviewing officer, did explain it. The Board found this explanation was adequate. They further found the failure of the reviewing officer of record to provide such an explanation was not a material error warranting corrective action. The Board noted the reviewing officer of record acknowledged that the investigation did not specifically find you responsible for any

wrongdoing. They were unable to find the reporting senior of record was inaccurate or unjust in citing deficiencies on your part, noting that officer acknowledged in section D that you were "technically proficient" and that the performance of your division had been "more than satisfactory." Finally, you assert that you did not make the decision to authorize the temporary release of the prisoner, citing the finding of your competency review board (which was based on your own testimony at exhibit 5), that your OIC directed you to bring the prisoner from the brig. While the reporting senior does refer, in section G, to "[your] [emphasis added] decision to obtain temporary release of a prisoner from the brig without command authorization," the third sighting officer clarifies that neither you nor the OIC had the authority to release the prisoner, and that neither you nor the OIC requested permission from the command for release authority. The Board felt you effectively established that the OIC shared responsibility for the situation, not that you were blameless.

In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

4648-00

IN REPLY REFER TO:
1610
MMER/PERB
29 JUN 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
GUNNERY SERGEANT [REDACTED], [REDACTED] USMC

Ref: (a) GySgt [REDACTED] DD Form 149 of 30 Mar 00
(b) MCO P1610.7E

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 27 June 2000 to consider Gunnery Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 990309 to 991005 (TR) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends the report is not per established performance evaluation policy and that the adverse marks/comments are inaccurate and unjust. To support his appeal, the petitioner furnishes copies of a command investigation, results of the Competency Review Board, and three fitness reports.

3. In its proceedings, the PERB concluded that the report is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. Among the numerous enclosures to reference (a) are copies of interviews, investigative documents, EEO statements, and extracts from another Marine's fitness report. The exact relevancy to this particular petition is cloudy at best. What is clear, however, is that there were numerous and significant problems in the section for which the petitioner was the non-commissioned officer in charge. Problems of this type are commonly attributed to ineffective leadership.

b. The Board finds no evidence to support the petitioner's inference of undue influence by the Commanding Officer and Staff Judge Advocate. Obviously the Commanding Officer lost confidence in the leadership of the GSE Division and exercised his rightful prerogative in effecting the petitioner's relief for cause.

c. Since both the petitioner and his Reporting Senior (CWO-3 [REDACTED]) were involved in the unauthorized temporary release of a confinee on multiple occasions, it is not unreasonable to assume

(31 PERB

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that the Commanding Officer had also lost faith and confidence in the judgment/leadership of the Division Head as well. As such, it seems appropriate to have removed [REDACTED] from the reporting chain. While this Board is not privileged to know the full scope of the investigation regarding the Division Head, the implications inherent with the case would justify the Commanding Officer's decision to modify the reporting chain for unresolved conflicts and/or a lack of professional objectivity. Subparagraph 2011.6d of reference (b) applies.

d. Succinctly stated, the challenged fitness report clearly documents the substandard performance and flawed judgment which led to the petitioner's relief. Notwithstanding the petitioner's objections and the documentation furnished with reference (a), the Board discerns absolutely no error or injustice.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part of Gunnery Sergeant [REDACTED]'s official military record.

5. The case is forwarded for final action.

[REDACTED]

Chairperson, Performance
Evaluation Review Board
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps